IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FIRST DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 12711 of 2004

Between:

The Toddy Co. Operative Society, Ragatlapalli Toddy Shop, Ragatapalli (V) Yellareddypet (M), Karimnagr District, rep. by its B. Mallesham S/o. Yellaiah Goud,

..... PETITIONER

AND

1 The Supt of Proh & Excise, Karimnagar, Karimngar District.
2 The Station House Officer/Inspector of Proh& Excise,

Yellareddypet (M), Karimngar District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ o Mandamus directing the respondents not to interfere in carrying the toddy business of the petitioner society herein by declaring the impugned proceedings, Rc.No.929/2004/P&F/A8, dt. 28.6.2004 in respect of the petitioner toddy Co.Operative Society, Ragatlapalli (V) Yellareddypet (M), Karimnagar District, as illegal and consequently direct the respondents not to cancel the license bearing No.1004/02-03, dt. 10.4.2002 valid up to 31.3.2007 pending receipt of the 2nd sample bottle report named by the petitioner.

Counsel for the Petitioner: SMT.CHINTALAPUDI LAKSHMI KUMARI

Counsel for the Respondent No.: GP FOR PROHIBITION & EXCISE

The Court at the admission stage made the following :

ORDER:

This writ petition is filed questioning the proceedings dated 28-06-2004 issued by the Prohibition and Excise Superintendent, Karimnagar suspending the licence of the petitioner – Toddy Cooperative Soceity, with immediate effect pending enquiry.

In the impugned proceedings, dated 28-06-2004 it is alleged that the Toddy Shop of the petitioner Society was inspected by the Prohibition and Excise Officials o n 30-01-2003 and three samples of toddy were taken under the cover of panchanama. It is further stated that on chemical analysis it was found that the toddy was adulterated with Chloral Hydrate. On the basis of the same, the first respondent observed that in view of the public health and safety and with a view to restrain the licensee from indulging in such practice, the licence is liable for suspension or cancellation, issued the impugned proceedings dated 28-06-2004 suspending the licence with immediate effect pending enquiry. On the same day, the 1st respondent issued a show cause notice calling upon the petitioner as to why his licence should not be cancelled under Section 31(1)(b) of A.P. Excise Act, 1968 for contravention of licence conditions. Pursuant to show-cause notice, the petitioner Society had already submitted necessary explanation within the stipulated time.

This writ petition is filed contending that all the allegations made in the impugned proceedings are incorrect and baseless and that the respondents have implicated the petitioner-society on the basis of a false and fabricated report of the 2nd respondent.

Such disputed questions of fact cannot be enquired into by this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India. Further admittedly, against the impugned proceedings, an alternative remedy is available under the Statute by way of Appeal. Hence the petitioner ought to have exhausted the alternative remedy of Appeal before invoking the extraordinary jurisdiction under Article 226 of the Constitution of India.

In the circumstances, without expressing any opinion on merits of the case, the Writ petition is disposed of granting leave and liberty to the petitioner to avail the statutory remedy of appeal.

The learned Counsel for the petitioner states that as per rule 24 of the A.P. Excise (Tapping of Trees and Toddy Shops Special Conditions of Licence) Rules, 1969 as amended by G.O.Ms.No.880, Revenue (Ex.II) Department, dated 22-08-1992, the licensee is entitled to seek the Excise Superintendent to send the second sample for analysis to an independent laboratory. It is always open to the petitioner to make such a request before the Competent authority, in which event the same shall be considered in accordance with Law.

Accordingly, the Writ Petition is disposed of. No costs.

21st JULY 2004

BSS/GBS

Assistant REGISTRAR

// TRUE COPY//

SECTION OFFICER

To

1 The Superintendent of Proh. & Excise, Karimnagar, Karimngar District.
2 The Station House Officer/Inspector of Prohibition & Excise, Yellareddypet

(M), Karimngar District.

3. 2CCs to G.P. for Prohibition & Excise, High Court Buildings, Hyderabad

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